

INDEPENDENT POLICE REVIEW AUTHORITY
Log #1072859/U #14-041

06 September 2017

TO: Chief Administrator
Independent Police Review Authority

FROM: Investigator 1

SUBJECT: Log #1072859
U #14-041

REFERENCE: RD #HX-XXXXXXX, Aggravated Battery

DATE/TIME: 07 December 2014, 1825 hours

INVOLVED

SGT.: Sergeant 1.; Chicago Police Sgt.; Star #XXXX; Unit XXX; white male; employee #XXXXX; DOB: 26 December 19XX; DOA: 10 May 1999; off-duty; civilian clothes.

INVOLVED

SGT.'S

WEAPON:

Glock, Model 42, .380 ACP semi-automatic pistol; Serial#XXXXXX; not registered; FOID #XXXXXXX; Hornady ammunition; six-round capacity magazine, which was empty [total weapon capacity 6+1]; 7 casings recovered; see Crime Scene Processing Report #263179; gun in slide-lock, chamber empty, when recovered; TRR indicates 7 shots were fired. Inventory #13329713. (Att. 10)

INVOLVED

SGT.'S

INJURIES: None reported.

WITNESS

OFFICER #1:

Officer A; Chicago Police Officer; Star #XXXX; Unit 005; white male; employee #XXXXX; DOB: 21 December 19XX; DOA: 03 June 2013; off-duty, civilian clothes. No reported injury.

WITNESS

OFFICER #2:

Officer B; Chicago Police Officer; Star #XXXX; Unit XXX; white male; employee #XXXX; DOB: 25 February 19XX; DOA: 30 September 2002; off-duty, civilian clothes. No reported injury.

WITNESS

OFFICER #3:

Officer C; Chicago Police Officer; Star #XXXXXX; Unit XXX; white male; employee #XXXXX; DOB: 12 August 19XX; DOA: 25 August 2003; off-duty, civilian clothes. No reported injury.

WITNESS

OFFICER #4:

Officer D; Chicago Police Officer; Star #XXXXXX; Unit XXX; white male; employee #XXXXXX; DOB: 22 October XXXXX; DOA: 02 September 1997; off-duty, civilian clothes. No reported injury.

WITNESS

OFFICER #5:

Officer E; Chicago Police Officer; Star #XXXXXX; Unit XXX; white male; employee #XXXXXX; DOB: 28 January 1981; DOA: 26 January 2004; off-duty, civilian clothes. No reported injury.

INJURED

SUBJECT

(DECEASED):

Subject 1, white male, DOB: 12 May XXXXX; XXXXX S. St. Louis Avenue, Chicago, IL, IR#1436538.

SUBJECT'S

INJURIES:

Multiple gunshot wounds. Deceased on scene.

INJURED

SUBJECT'S

WEAPON:

Beretta 3032 Tomcat; .32 caliber semi-automatic pistol; stainless steel finish; Serial#XXXXXXXXXX; not registered; black PB .32-cal. magazine; 6 cartridges recovered from magazine [total weapon capacity 7+1]; 1 live cartridge recovered from chamber. Inventory #XXXXXXXXXX. (Att. 10)

INJURED

CIVILIAN

WITNESS:

Civilian 1; white male; DOB: 26 December XXXX; XXXX S. Hamlin Avenue, Evergreen Park, IL.

INJURED

CIVILIAN

WITNESS'

INJURIES:

Gunshot wound to the abdomen.

LOCATION:

Inside XXXX Pub, XXXX S. Spaulding Avenue (also listed as XXXX W. 111th Street); Beat 933

TIME OF IPRA

NOTIFICATION: 1846 hours

TIME OF IPRA

RESPONSE: 1940 hours

INTRODUCTION:

On 07 December 2014, Sergeant 1 was off-duty and at the XXXX Pub at XXXX S. Spaulding where he observed the subject, Subject 1, engaged in a verbal altercation with the victim, Civilian 1. Sergeant 1 observed Subject 1 pull out a gun, point it at Civilian 1, and shoot him. Subject 1 then waved the weapon back and forth at Sergeant 1 and other bar patrons. Sergeant 1 announced his office by stating, “Police, police, police,” and ordered Subject 1 to drop his weapon. When Subject 1 did not comply with Sergeant 1’s verbal commands, Sergeant 1, in fear of his life and the lives of the other bar patrons, shot Subject 1 multiple times. Subject 1 was pronounced dead on arrival by CFD paramedics. Civilian 1 was transported to Christ Hospital, where he was treated for a gunshot wound to his abdomen.

APPLICABLE RULES

Chicago Police Department General Order, GO 03-02-03; Deadly Force

INVESTIGATION:

Per the **Preliminary Summary Report**, the following information was provided by Deputy A, #XXX, the on-call incident commander, to IPRA personnel during a walk-through of the scene on 07 December 2014, at approximately 2134 hours. Deputy A provided the information based upon multiple levels of hearsay and not verbatim.

Deputy A related that, on 07 December 2014, at approximately 1730 hours, Sergeant 1, who was off-duty, entered the XXXX Pub at XXXX S. Spaulding, to meet some friends. They sat at the west end of the pub over-looking 111th Street. At approximately 1825 hours, Sergeant 1 heard a verbal exchange between Subject 1, who was sitting on the north side of the rectangular bar, and Civilian 1, who was sitting with friends on the south side of the bar. The argument lasted approximately 30 seconds. Sergeant 1 walked behind Civilian 1 and advised him to ignore what Subject 1 was saying. Sergeant 1 then returned to his friends.

Approximately five minutes later, Subject 1 walked around the bar, and again exchanged words with Civilian 1. Sergeant 1 saw Subject 1 pull out a gun from his pocket, point it at Civilian 1, and fire once. Subject 1 began “fanning” his weapon at other persons in the pub. Sergeant 1 said, “Police, police,” and told Subject 1 to drop his weapon, which he did not. Sergeant 1 drew his firearm and fired seven shots at Subject 1, who was hit multiple times. One of the shots apparently struck an east window of the pub, breaking an interior pane of glass, but not penetrating an exterior pane. When Subject 1 did not fall, off-duty Evergreen Park Officer F tackled Subject 1, removed his firearm, removed its magazine and placed the gun and magazine on a nearby table.¹

¹ See Crime Scene Processing Reports #XXXXXX and XXXXXX for recovered evidence. Testing of evidence to be determined.

Deputy A later related to Investigator 2 that SPAR #XXXXXX was obtained on Sergeant 1 for failing to register the weapon that he used in this incident. No police vehicle was involved in the incident and no PODs were observed outside the bar. Deputy A related a video camera inside the pub was recording during the incident, but the recording did not depict the shooting incident. A copy of the recording was to be made for the detectives and for IPRA. (Att. #4)

Victim Civilian 1 is represented by counsel and was advised not to provide IPRA with a statement. (Att. #83)

Departmental Reports for RD #HX-XXXXXXX document that an aggravated battery with a handgun was committed by Subject 1, in that he shot the victim, Civilian 1, at the XXXX Pub. This incident became a police-involved shooting when Sergeant 1 shot Subject 1 to stop the threat. (Att. #6, 7)

A Chicago Fire Department Ambulance Report for Incident #XXXXXXXXXX indicates Subject 1 was found lying face down on the ground with multiple gunshot wounds to the chest and abdomen. He had no signs of life and was called in as a Deceased to Holy Cross Hospital. (Att. #16)

A Chicago Fire Department Ambulance Report for Incident #XXXXXXXXXX indicates Civilian 1 was found with multiple gunshot wounds to the right and left flank with no exit wounds. Civilian 1 was taken to Christ hospital for treatment. (Att. #17)

Medical Records from Advocate Christ Medical Center document Civilian 1 was brought into the hospital and treated for a gunshot wound² to his abdomen (right upper quadrant and left flank). Upon arrival, Civilian 1 was hemodynamically stable, but with signs of peritonitis³. According to the History of Present Illness, Civilian 1 was in a bar drinking when another patron pulled out a gun and shot him in the abdomen. Additionally, it is noted that an off-duty police officer subsequently fatally shot the assailant. Civilian 1 underwent exploratory laparotomy, and right hemicolectomy, Jejuna resection and primary anastomosis. The following were the findings; multiple jejuna injuries in a segment of approximately 60 cm of jejunum, ~10 cm from the ligament of Treitz; multiple gunshot wounds in the transverse colon, in the hepatic flexure and grade 2 liver lacerations (non-bleeding). The final diagnosis was gunshot wound to the right upper quadrant and left flank, and peritonitis. (Att. #85, starting on p. 69 - 79)

Evidence Technician Photographs were taken of the XXXX Pub interior; the body of Subject 1; ballistic evidence within the scene; and the firearm reported to belong to Subject 1. (Att. #19)

² Per the medical records, 2 holes, 1 bullet. P. 79 (Att. 85)

³ Medical Records of Civilian 1 from Advocate Christ Medical Center - Peritonitis is an inflammation of the peritoneum, the thin tissue that lines the inner wall of the abdomen and covers most of the abdominal organs. Peritonitis requires prompt medical attention to fight the infection and, if necessary, to treat any underlying medical conditions, page 78. (Att. 85)

Medical Examiner's Office Photographs depict several fragmented bullets, Subject 1's clothing and various images of Subject 1's deceased body with close-up images of his gunshot wounds. (Att. #21)

According to the **Medical Examiner's Final Report** for Case #XXXXXX-XXXX (Subject 1), Doctor A performed the examination of Subject 1 who had three penetrating gunshot wounds involving the right arm, left chest, left abdomen and the right flank/back area. He also had two perforating gunshot wounds involving the left arm and left chest. It was noted there was no evidence of close range firing in the skin surrounding the wounds. Subject 1's ethanol level in vitreous humor was 390 mg/ml. Doctor A recovered three fired medium caliber copper-jacketed bullets from Subject 1's remains. The opinion was that Subject 1 died due to multiple gunshot wounds and his cause of death was homicide. (Atts. #20, 101)

The **XXXX Pub** video was grainy and contained three video files showing views from three cameras (#8, 11, and 13). Each of the three files ran for approximately 15 minutes. None of the footage captured the shootings. (Att. #89-91) Camera #11 depicts a white male wearing a dark shirt and hoodie, with dark hair that falls to his neckline (now known as Subject 1) seated at the bar. At 5:54:05, Subject 1 appears to be fidgeting with something inside of his jacket pocket. At 6:21:54, and 6:22:35 he is shown reaching inside of his jacket pocket again. At 6:22:41, Subject 1 got up from the bar and walked east, out of the view of the camera.

At 6:23:22 there appears to be a commotion at the bar in a place out of the camera's view. The bar patrons' attention is directed to an area of the bar that is beyond the camera's view. At 6:23:28 patrons seated at the bar drop to the ground in what appears to be a response to a commotion.

The **CPD Crime Scene Video** was filmed by Evidence Technician A, #XXXX, on 07 December XXXXX, at approximately 2025 hours. The video has a run time of 05:33 minutes. The footage starts with a view of the street signs at the intersection of Spaulding Avenue and 111th Street. The camera pans to the exterior of the XXXX Pub and then into the pub. The inside views of the pub depict what appears to be Subject 1's deceased body on the floor covered with a white cloth. Also visible on the video are views of the rectangular-shaped bar area, and a small silver handgun which is reported to have been in the possession of Subject 1. (Att. #26, 88)

CPD Event Queries document multiple 911 callers reporting a shooting inside of the XXXX Pub. Other callers reported a police-involved shooting occurred inside of the bar. (Att. #14)

Sergeant 1's **Tactical Response Report** documents that Subject 1 was armed, under the influence, did not follow verbal direction, posed an imminent threat of battery with a weapon, and used force likely to cause death or great bodily harm. It was reported that Sergeant 1 drew his weapon, announced his office, and ordered Subject 1 to drop his weapon, after witnessing Subject 1 shoot Civilian 1. Sergeant A stated that Subject 1 began waving his weapon in the direction of bar patrons "placing all in the establishment in fear of their lives." Sergeant 1 then fired his weapon striking Subject 1 numerous times. Additionally, a SPAR (#XXXXXX) was obtained for Violation 8: Failure to comply with Department Directive regarding Personal Weapons or Ammo-Failure to register a weapon. (Att. #8)

Sergeant 1's **Officer Battery Report** documents that he was uninjured during his encounter with Subject 1. (Att. #9)

Illinois State Police (ISP) Forensic Science Laboratory Reports dated 06 January 2015 reveals that Sergeant 1's handgun, a Glock, model 42, .380 Auto caliber semiautomatic Pistol - serial #XXXXXX, was examined and determined to be functioning properly. The seven fired cartridge cases that were recovered from the scene were examined and determined to have been fired from Sergeant 1's weapon.

Illinois State Police (ISP) Forensic Science Laboratory Reports dated 23 April 2015 – reveals that Subject 1's handgun, –a Beretta, model 3032 Tomcat, .32 Auto caliber semiautomatic Pistol with serial #XXXXXXXXXX was examined and determined to functioning properly.

A **supplementary Illinois State Police Laboratory Report for RD#HX-XXXXXXX** documents Subject 1 had gunshot residue on both hands. (Att. #98)

Illinois State Police (ISP) Forensic Science Laboratory Reports dated 04 February 2015 documented exhibit 12 – one discharged cartridge case, exhibit 14 – one silver “Beretta” handgun with black grips, exhibit 15 – one empty black magazine, exhibit 16 – six live cartridges and exhibit 17 – one live cartridge were all examined and they did not reveal any latent prints that were suitable for comparison. These exhibits were forwarded to the Firearms Section. (Att. 103)

In a **statement to IPRA** on 07 December XXXXX, **Witness Officer F**, who is an Evergreen Park police officer, stated that on 07 December XXXXX he went to the XXXX Pub and was sitting on the southwest corner of the bar with his friends, Officer A and Civilian 1. Officer F stated that he observed a man with long dark hair wearing a green hoodie (now known as Subject 1) sitting across from them at the bar. He stated that Subject 1 was giving “strange” looks to people and described Subject 1 as having “crazy eyes.” He stated that Civilian 1 “called him out” and said, “What the hell you looking at? Stop fucking looking at me.”⁴ Officer F stated that, at some point, Subject 1 walked up behind Civilian 1 and “threw a shove, and like a wild punch.” Officer F stated that he immediately stood up to create a distance and “push them off.” Officer F stated that he pushed Subject 1 away from him and that he was standing about three to four feet away from Subject 1. Officer F stated that he did not see a firearm in Subject 1's hands, though he later learned that he was armed.

Officer F explained that moments later, he heard a series of gunshots. As Officer F covered himself and tried to determine where the gunshots were coming from, he observed a man with glasses and a shaved head (now known as Sergeant 1). He stated that Sergeant 1 fired his weapon two or three times at Subject 1.

Officer F observed Subject 1 fall to the ground and drop his small silver .380 handgun, which landed about six inches from his hand. Officer F immediately grabbed Subject 1's gun and cleared it. He stated he that he felt a hand on his shoulder and turned to see Sergeant 1, who asked him for identification. Officer F produced his badge to Sergeant 1, who then told Officer F that he was a Chicago Police Officer in the 22nd District.

⁴ Statement of witness Evergreen Park Police Officer F, page 5, lines 28 – 29. (Att. 23, 25)

After the event had occurred, Officer F looked around the bar and saw that Civilian 1 was laying on the ground. It was at this time that Officer F realized that Civilian 1 had been shot. Officer F observed Civilian 1 lying on the ground. He stated that the police arrived shortly thereafter. Officer F stated that he believed Sergeant 1 “probably saved a lot of lives.”⁵ (Att. #23, 25)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 2** stated that he was at the XXXX Pub with his friend, Civilian 3, and they were sitting at the bar facing the front door⁶. Civilian 2 stated that he was sitting two seats away from Subject 1. Civilian 3 told him that Subject 1 previously worked at the bar, but had “problems.” He also stated Civilian 3 warned him to leave Subject 1 alone, stating “he’s kind of, you know, out of the ordinary.” Civilian 2 recalled Subject 1 “sporadically talking” and “trying to make conversation with anybody.” Additionally, he recalled a younger man (now known as Civilian 1) sitting across from him on the other side of the bar.

Civilian 2 stated that he and Civilian 3 went outside to have a cigarette and when they returned there was a “lil’ bit of a scuffle going on.”⁷ Civilian 2 stated that he and Civilian 3 walked back to their seats and heard “some words being exchanged” between Subject 1 and Civilian 1. At the time, Civilian 2 did not think anything of this and was not paying attention to what was being said between the two men. Civilian 2 stated that suddenly, Subject 1 produced a pistol and shot Civilian 1.

Civilian 2 recalled seeing the gun in Subject 1’s hand go off once before he dropped down to take cover. Civilian 2 stated that he looked up and saw a “bald-headed gentleman” (now known as Sergeant 1) shoot Subject 1 approximately four times. He recalled that Sergeant 1 was previously sitting with a group at a table near the front of the bar.

He stated that after shooting Subject 1, Sergeant 1 yelled, “Somebody call 911!” He stated that the woman sitting directly to the east (now known as Civilian 4) dialed 911 on her phone, but was so shaken up that she could not talk to the dispatcher. Civilian 2 took her phone and spoke to the dispatcher. Civilian 2 recalled hearing sirens and stated that he heard people identifying themselves as police officers, including Sergeant 1 who held his shield up in the air. He concluded his statement by stating that, He was really glad that Sergeant 1 was there. He said, “cause if it wasn’t for him, you know who knows who the guy would shoot at next.”⁸ (Att. #28, 30)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 5** stated that he was at the XXXX Pub with some friends, including Civilian 3 and Civilian 1. Prior to the incident, Civilian 5 observed a man (now known as Subject 1) “messing with” Civilian 1. Civilian 1, who was sitting across the bar from Subject 1, told Subject 1 to leave him alone and to stop talking to him. Civilian 5 stated that Subject 1 got up, came around the bar, and pushed Civilian 1. Civilian 5 said that Civilian 1 did not have time to react before Subject 1 shot him with a small, shiny gun. Civilian 5 stated that an off-duty officer (now known as Sergeant 1) proceeded to shoot Subject 1, “essentially saving the day because who knows what would’ve happened if he wasn’t there.” Civilian 5 stated that the incident occurred very close to the front door on the south side of the bar.

⁵ *Id.* Page 19, lines 17 - 18.

⁶ Statement of Civilian 2. Page 8, line 20. Civilian 2 stated that he was sitting on the northwest corner of the bar. (Att. 30)

⁷ *Id.* Page 7, lines 16 – 17.

⁸ *Id.* Page 17, lines 3 - 6.

Civilian 5 stated that he saw Subject 1 at the XXXX before, always very intoxicated, as he appeared to be on this date. Civilian 5 stated that he was within ten feet of Civilian 1 at the time he was shot. He observed one gunshot wound to Civilian 1's lower left stomach with no exit wound through his back and another wound to his shoulder. Civilian 5 recalled Sergeant 1's gun was a black pistol, possibly a 9mm. Civilian 5 did not recall hearing Sergeant 1 say anything. (Att. #32, 34)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 3** stated that, shortly before the incident, he and his friend, Civilian 2, came back inside of the bar after having gone outside to smoke a cigarette. Civilian 3 stated that he and his friend were sitting back down when he observed shoving between two men, now known as Subject 1 and Civilian 1. Civilian 3 stated that Subject 1 "pulled out a gun and started firing." He stated that before he "hit the ground," he saw three muzzle flashes. After Civilian 3 got back up, he saw Subject 1 lying on the ground. Subject 1 appeared to be dead. Civilian 1 was being treated by someone on scene. Civilian 3 stated that he did not observe Sergeant 1 shoot Subject 1 because he was taking cover on the ground. Civilian 3 stated that he was familiar with Subject 1 because Civilian 3 used to be a bouncer at the XXXX Pub and Subject 1 was known for starting fights at the bar. (Att. #36, 38)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 6** stated that he observed Subject 1 sitting at the bar by himself. Civilian 6 noticed Subject 1 "smiling about nothing" and "was off, you could tell." He also recalled that Subject 1 was very intoxicated. Civilian 6 stated that Civilian 1 told Subject 1, "Quit looking at me." He stated that no one thought anything of it and they went back to watching football. Civilian 6 was seated next to Civilian 3 on his left and Civilian 5 on his right. He stated that Civilian 2 was seated next to Civilian 3.

Civilian 6 stated that suddenly it appeared that Subject 1 and Civilian 1 were about to fight. He recalled Subject 1 pushing Civilian 1 and then drawing a gun and pointing it at Civilian 1's stomach. Civilian 1 was still seated on his bar stool at the time Subject 1 shot him. Civilian 6 stated that he got down on the ground and crawled to the opposite side of the bar, away from the altercation. He stated that he and two other unknown men ran up a staircase, closed a door, and stayed there until the shots stopped. Civilian 6 eventually returned to the bar area where he observed Civilian 1 and Subject 1 on the ground. He did not actually see Sergeant 1 fire his weapon. (Att. #40, 42)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 7** stated that he was standing at the back half of the square-shaped bar with his wife, Civilian 4, when the shooter, a man he knows as "Subject 1" (now known as Subject 1) got up from his seat. Subject 1, who was seated next to Civilian 7's wife, began walking east around the bar. Civilian 7 assumed that Subject 1 was leaving, going to the bathroom or going outside to smoke. Civilian 7 observed Subject 1 have an altercation with a younger man (now known as Civilian 1) on the south side of the bar. Civilian 7 observed Subject 1 shove Civilian 1, who was seated, and say something to him. He next observed Subject 1 pull out a small gun, point and fire it at Civilian 1. Civilian 7 stated that within a minute, he saw another man (now known as Sergeant 1) with a gun. Sergeant 1, was approximately 15-20 feet away from Civilian 7, yelled something and shot at Subject 1 approximately five to eight times. Civilian 7 stated that he went to look for Civilian 1 in order to offer assistance and observed that Civilian 1 was shot in the left lower rib cage. Civilian 7 was not a witness to any prior altercations

between Subject 1 and Civilian 1. He stated that Subject 1 did not seem angry prior to shooting Civilian 1. (Att. #44, 46)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 4** stated that she was at the XXXX Pub with her husband, Civilian 7, seated in the southwest corner of the bar. Civilian 4 stated that she saw a man, now known as Subject 1, talking to a gentleman, now known as Civilian 1, who was sitting across from her at the bar. She saw Subject 1 shove Civilian 1 and state, "You got something to say to me?" Civilian 4 stated that Subject 1 then shot Civilian 1. She stated that she was scared and ducked under the bar. Civilian 4 stated that she did not witness the officer-involved shooting, but recalled hearing approximately four more gunshots. Civilian 4 stated that she called 911, but was too upset to talk and handed her cell phone to a Civilian 2, who was sitting next to her at the bar. When she stood back up, Civilian 4 stated that she began to walk to the door, and observed Subject 1 lying on the floor. She also observed Civilian 1, who had been shot. Soon after, paramedics and police officers arrived at the scene. (Att. #48, 50)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 8** stated that he went to the XXXX Pub to meet up with a couple of friends, including Civilian 1. Upon entering the bar, he noticed some friends from high school sitting on the corner of the bar and went over to say hello. Civilian 8 proceeded to go to the restroom. When he came back to the bar area, he was standing next to his friend Civilian 1. Civilian 8 stated that he heard Civilian 1 yelling at a man sitting across the bar from him, (now known was Subject 1). He stated that Civilian 1 told Subject 1, "Stop fuckin' starin' at me, and sayin' shit to me."⁹ Civilian 8 stated that Subject 1 replied by stating, "Sorry, I fucked up. OK, I fucked up, alright."¹⁰ Civilian 1 replied by stating, "Don't tell me you fucked up, just quit fuckin' lookin' at me. Just leave me alone. Quit fuckin' lookin' at me."¹¹ Civilian 8 stated that he then observed Subject 1 stand up and go tell an unknown man in a hooded sweatshirt, "I'm about to go put a bullet in this guy."¹² Civilian 8 told Civilian 1, "This guy just said he's going to put a bullet in you."¹³ Civilian 1 laughed no realizing that Subject 1 was a real threat.

Civilian 8 stated that Subject 1 appeared to walk toward the door and then began walking toward them. As Subject 1 got closer, Civilian 8 observed Subject 1 pull a shiny gun out of his pocket. Civilian 8 stated that Subject 1 appeared to have "tunnel vision". He recalled seeing Subject 1 walk up to Civilian 1 and state, "How about now or never?"¹⁴ Civilian 8 raised his hands up in the air and stated, "Whoa, whoa not me," as he walked around the bar and got away from the area. Civilian 8 then heard two gunshots followed by a rapid succession of four to seven gunshots. He stated that he did not actually witness any shots fired as he ducked down and followed two other people up some stairs. Civilian 8 stated that he was not a witness to the police-involved shooting. (Att. #52, 54)

In a **statement to IPRA** on 07 December XXXXX, **Witness Civilian 9** stated that she was working as a bartender at the XXXX Pub on the night of the shooting. She recalled Subject 1 was seated at the bar next to his friend, Civilian 10. Civilian 9 stated that there was a confrontation between Subject 1 and "Civilian 1" (Civilian 1). She stated that when Subject 1 "drinks a lot, he

⁹ Statement of Civilian 8, page 5, lines 13 and 14. (Att. 54)

¹⁰ *Id.* Page 5, lines 16 – 17.

¹¹ *Id.* Page 5, lines 19 – 21.

¹² *Id.* Page 6, lines 7 – 8.

¹³ *Id.* Page 7, lines 16 – 17.

¹⁴ *Id.* Page 8, line 21.

talks a lot of crap.” Civilian 9 stated that he told her that she was “fucking horrible” multiple times throughout the evening. She also stated that he drank three beers during the approximately two hours he was at the bar. Civilian 9 recalled Civilian 1 telling Subject 1 to leave him alone. Civilian 9 stated that she tried to explain to Civilian 1 “how Tommy is” and to just ignore him. She stated that Civilian 1 did not know Subject 1 prior to that night. Civilian 9 stated that she went to the cooler (located within the bar area) to get a beer for “Civilian 4” (Civilian 4), when she heard a confrontation. She stated that she looked back and saw Subject 1 making his way around the bar to Civilian 1, so she walked back toward Civilian 1. She stated that Subject 1 walked up to Civilian 1 and pushed him. Civilian 9 stated that Civilian 1 turned around and his friend, “Officer A” (now known as Officer A) told Subject 1 that they did not want any problems and attempted to calm him down. She stated that she never saw Subject 1’s gun, but heard a “pop.” Civilian 9 stated that a Sgt. (now known as Sergeant 1) then fired his weapon approximately five times. She described Sergeant 1 as being in his late fifties, bald, and wearing glasses. Civilian 9 stated that Subject 1 immediately fell to the ground. Thereafter, she grabbed the phone to call 911 and went into the office. (Att. #56, 58)

In a **statement to IPRA** on 08 December XXXXX, **Witness Civilian 11** stated that he was at the XXXX Pub and went outside to have a cigarette when he heard a gunshot, followed by four or five additional gunshots. Civilian 11 stated that he looked into a window and saw a man (Subject 1) fall to the ground. He stated that he went back inside the bar and observed “a police officer standing over the victim.” Civilian 11 stated the police officer (now known as Sergeant 1) pointed at him and directed him to call 911. He stated that the other man who was shot (Civilian 1) was on the other side of the bar. Civilian 11 observed police officers arrive and tape the crime scene. He stated that he “hung around the bar and watched the police officers taking pictures of the crime scene.” Civilian 11 heard someone say “One guy shot another guy in the wrist and then the police officer came over and shot him.”¹⁵ (Att. #60, 63)

In a **statement to IPRA** on 08 December XXXXX, **Witness Officer Officer E, #XXXXX, Unit XXX**, stated that he was off-duty when he arrived at the XXXX Pub on 07 December XXXXX, at approximately 1500 hours, to meet up with Officer C, Officer B, Officer D, and Lt. A. Officer E stated that Sergeant 1 showed up at some point later. He recalled that they sat at a table by the window on the 111th Street side. Officer E was watching a football game and recalled hearing a commotion to his right. However, he did not pay any attention to it and went back to watching the game. A short time later he observed a man (now known as Subject 1) walk around the bar toward a group of four white men sitting to his right. Officer E saw Subject 1 approach a man (now known as Civilian 1), push his head and say something to the effect of, “You wanna talk shit or you wanna fuckin’ make fun of me?”¹⁶ Officer E turned back around toward his table and heard someone scream, “He’s got a gun! He’s got a gun!” Officer E turned back around and observed Subject 1 shoot Civilian 1 in his stomach once. Officer E observed Sergeant 1, who was standing to his right, draw his weapon and yell, “Police, police,” and fire his weapon five or six times. He then observed an unknown person (now known as Evergreen Park Police Officer F) grab and place Subject 1’s small silver gun on a table. Officer E stated that he later learned that there were other officers at the bar, but he did not know their names. (Att. #64, 65)

¹⁵ Statement of Civilian 11, page , line . (Att. 63)

¹⁶ Statement of PO E, page 11, lines 11 – 13. (Att. 65)

In a statement to IPRA on 08 December XXXXX, Witness Officer A, #XXXX, Unit 005 (detailed to Unit XXX), stated that he was off-duty and at the XXXX Pub with Civilian 1, Civilian 6 (his brother), Civilian 5, and "Officer F" (Officer F). He stated that they were sitting in the southwest corner of the bar watching football. Subject 1 was sitting across the bar from them and was being "antagonistic"¹⁷ toward Civilian 1 by swearing at him from across the bar. He stated that this went on for about twenty to twenty-five minutes. Officer A said he told Civilian 1 to "relax" and "ignore" Subject 1. He stated that five minutes later Subject 1 walked around the bar toward Civilian 1 and pushed him with his left hand and shoulder. Subject 1 then drew a weapon and fired at Civilian 1 with his right hand from his lower hip area. Subject 1 raised his weapon again, at which time "the off-duty officer" (now known as Sergeant 1) grabbed and pushed Officer A aside.

He stated Sergeant 1 said, "Gun, gun, gun," and "Police, police, police,"¹⁸ before discharging his weapon. He also recalled hearing someone state, "Drop the gun, drop the gun,"¹⁹ but was not sure exactly who stated this language. Officer A stated that he heard at least four gunshots. He never actually saw Sergeant 1 pull the trigger because he was standing directly behind him as he was firing. Officer A noted that Civilian 1 had a gunshot wound to his abdomen. Officer A stated that he did not see anyone else have contact with Subject 1. (Att. #66, 67)

In a statement to IPRA on 08 December XXXXX, Witness Officer D, #XXXXXX, Unit XXX, stated that he was off-duty and at the XXXX Pub watching football with Officer B, Officer C, and Officer E. Sergeant 1 met up with them sometime later at approximately 1730 hours. Officer D stated that he saw a verbal altercation between two unknown bar patrons (now known as Subject 1 and Civilian 1) who were sitting across the bar from each other. Officer D saw one of the patrons get up, walk around the bar and push a couple of patrons. He then heard a loud "pop" and observed Sergeant 1 discharge his weapon several times.

Officer D stated that he did not actually see Subject 1 holding the gun or discharge his weapon at Civilian 1 because people were standing in front of him. Officer D was seated at the same table that Sergeant 1 was standing at. He stated that he did not hear Sergeant 1 announce his office, but admitted that he suffers from hearing problems. Officer D stated that after the shooting, he went around the bar and checked on the patrons, and identified himself as a police officer. He asked them to stay at the bar in order to speak to the detectives. Officer D did not have any verbal or physical contact with Subject 1 or Civilian 1 while at the bar. Officer D believed that Sergeant 1 had no other option to stop Subject 1's threat of deadly force and had to discharge his weapon. (Att. #69, 70)

In a statement to IPRA on 08 December XXXXX, Witness Officer C, #XXXXXX, Unit XXX, who was off-duty at the time of the alleged incident, stated essentially the same account of the incident as Officer D. He recalled that the offender (now known as Subject 1) got up and walked around the bar and pushed a guy sitting down (now known as Civilian 1). Officer C stated that he heard a "pop," so he looked in that direction where Subject 1 was located and observed that he had a gun. He observed Sergeant 1 return fire, after stating "Gun, gun, gun, police". Officer C stated that he called 911 and waited for the paramedics and the police by the front door. Officer C stated that neither he nor any of the officers that were at his table had any physical contact with Subject 1. He believed that Sergeant 1 had no other option to stop the threat. (Att. #72, 73)

¹⁷ Statement of PO A, page 8, line 15. (Att. 67)

¹⁸ *Id.* Page 17, line 14.

¹⁹ *Id.* Page 17, lines 22 - 27.

In a **statement to IPRA** on 08 December XXXXX, **Witness Officer C, #XXXX, Unit XXX**, stated essentially the same account of the incident as the other police officers. He stated that he observed a verbal altercation between a dark-haired, middle-aged man with facial hair (now known as Subject 1) and a group of younger men sitting across the bar from Subject 1. Officer B recalled Subject 1 walked around the bar and up to these men. He stated that he saw a gun in Subject 1's right hand and yelled, "Gun!" Officer B then heard a gunshot. Next, he heard, "Police, police, police," and observed Sergeant 1 run toward Subject 1 and discharge his weapon "a couple times." He believed that Sergeant 1 had no other option to stop the threat. (Att. #75, 76)

In a **statement to IPRA** on 08 December XXXXX, **Involved Member Sergeant 1, Unit XXX**, stated that he arrived at the XXXX Pub at approximately 1730-1745 hours on 07 December XXXXX, the night of the shooting. Sergeant 1 stated that he was at a table close to the windows over-looking 111th Street with some members of his tactical team: Officers Officer E, Officer C, Officer B, and Officer D. He stated that they were all off-duty and watching football. Sergeant 1 stated that he observed Subject 1 sitting on the north side of the sit up bar at about the middle of the bar when he engaged in a verbal altercation with some men sitting across the bar from him. Sergeant 1 stated that he briefly spoke to Civilian 1 and a 5th District officer (now known as Officer A) and told them he had seen Subject 1 around the bar, and to ignore him because he was an alcoholic. He indicated that when Subject 1 talks, he makes gestures to himself. Sergeant 1 went back to watching football. A short time later, Sergeant 1 observed Subject 1 walk around the bar, go into his pocket, and removed a chrome handgun.

Sergeant 1 yelled, "He's got a gun! He has a gun! He's got a fucking gun!" Sergeant 1 stated that Subject 1, who was face to face with Civilian 1, stated, "Who's laughing now," at which time he shot Civilian 1. Sergeant 1 reached into his pocket and removed his pistol. Subject 1 then shot Civilian 1. Sergeant 1 observed Subject 1 fanning his gun around the bar and toward him. Sergeant 1 stated that he announced "Police," pushed his firearm out with both hands and stepped forward with his left foot while stating, "Police, police." Sergeant 1 stated that he was in fear for his life and the lives of everyone in the bar.

Sergeant 1 stated that he fired a total of seven rounds, as he had six rounds in the magazine and one in the chamber. Sergeant 1 stated that as he fired, Subject 1 fell to the ground. He stated that the Evergreen Park police officer (now known as Officer F) grabbed Subject 1's arms and took the firearm out of his hand. Officer F then cleared Subject 1's firearm and set it on top of a high top table.

Sergeant 1 stated that he told the bartender, Civilian 9, to call 911. He instructed Officer C to call Lt. A, the lieutenant of their tactical team, and tell him to come to the bar immediately. Sergeant 1 stated that an off-duty officer (now known as Officer C) came into the pub and ordered him to guard Subject 1's gun. Sergeant 1 did not know if Subject 1 had fired more than once. Sergeant 1 stated that he did not see any of the off-duty officers that were at the pub draw or discharge their weapons or have any physical contact with Subject 1. Sergeant 1 stated that paramedics and officers arrived a short time later. (Att. #78, 79)

ANALYSIS

CPD Policy, Illinois State Statute, & Constitutional Standards

This investigation found that Sergeant 1's use of deadly force was in compliance with Chicago Police Department policy and Illinois State statutes. According to the Chicago Police Department's General Order 02-08-03, III:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
 1. to prevent death or great bodily harm to the sworn member or to another person, or;
 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

Sergeant 1 was off-duty and at the XXXX Pub when he observed Subject 1 engage in a verbal altercation with the victim, Civilian 1. Sergeant 1 observed Subject 1 pull out a gun, point it at Civilian 1, and shoot him. Subject 1 then waved the weapon back and forth at Sergeant 1 and other bar patrons. Sergeant 1 announced his office by stating, "Police, police, police," and ordered Subject 1 to drop his weapon. When Subject 1 did not comply with Sergeant 1's verbal commands, Sergeant 1 shot Subject 1 multiple times.

Based on the totality of the circumstances Sergeant 1 was justified in using deadly force because it was reasonable for him to believe that he was in danger of death or great bodily harm when Subject 1 shot Civilian 1, and waved the gun back and forth at Sergeant 1 and other patrons. A Chicago Police Officer is permitted to use deadly force based on: Chicago Police Department's Policy regarding the use of deadly force, Illinois State Statute, and applicable standards within the United States Constitution.

The legal standard in Illinois regarding the use of deadly force is identified in Illinois State Statute 720 ILCS 5/7-5 (1986). The pertinent part of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be

necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...

Lastly, determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003).

The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). This reasonableness calculation 'must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.' *Graham*, 490 U.S. at 396-97. Consequently, "when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)).

When Subject 1 shot Civilian 1, and subsequently waved his gun at Sergeant A and other patrons, it was reasonable for Sergeant 1 to believe that his life was in danger. The incident occurred quickly, without warning, and Sergeant 1 had to make a split second judgment as to his safety as well as the safety of the patrons at the bar.

Subject 1 had committed a violent forcible felony and was clearly capable of continuing to harm other persons in the bar, to include Sergeant 1. The totality of the circumstances indicate that Sergeant 1 was in compliance with the statute "to prevent death or great bodily harm to the sworn member or to another person" because he reasonably believed that his life and the lives of the other bar patrons were in imminent danger when Subject 1, shot a man, failed to drop his weapon at Sergeant 1's command, and fanned it around in a crowded bar.